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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,413	02/15/2002	Thurein M. Htoo	800189-11 (6829-60483)	3281

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EXAMINER

RINEHART, KENNETH

ART UNIT PAPER NUMBER

3749

DATE MAILED: 06/10/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/077,413

Applicant(s)

HTOO ET AL.

Examiner

Kenneth B Rinehart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 57-59 is/are allowed.
- 6) ☒ Claim(s) 1-5,9-11,13,14,16-32,36-44,49-56,60 and 61 is/are rejected.
- 7) ☒ Claim(s) 6-8, 12, 15, 33-35, 45-48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION*****Response to Arguments***

Applicant's arguments filed 4/28/03 have been fully considered but they are not persuasive. The applicant argues that based on the definition of juxtaposed that the membrane of Rits is not side by side, nor adjacent, etc. Claims in a pending application should be given their broadest reasonable interpretation. In this case, juxtaposed is defined as side by side, adjacent, nearby. It is the examiner's contention that given the broadest reasonable interpretation of juxtaposed, the membranes of Rit are juxtaposed. The applicant next argues that Rits does not teach that the first filter element has a higher flexibility than the second filter element. The examiner disagrees. The first filter element has a smaller pore size and is of finer construction and thus more flexible.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 19-32, 36-43, 49-56, 60, 61 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 19-32, 36, 42, 49, 60, 61 refer to the contacting of the flexed structure with the membrane or filters contacting which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the

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application was filed, had possession of the claimed invention. Claims 26, 36-41, 43, 50, 56 refer to no absorbing material positioned between the first and second filter members which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 51-55 refer to moving the second filter toward the first filter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

### ***Drawings***

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Rits. Rits shows a flask having a structure defining an opening (cap 10 sealing opening, fig. 5); a first filter member disposed in the opening (22, fig. 2); and a second filter member disposed in the opening juxtaposedly to the first filter (26, fig. 2), said first filter member comprises at least one aperture sized to preclude passing of bacteria there through (22, fig. 2, col. 2, line 55), said first filter member comprises a plurality of apertures having an average aperture opening ranging from about 0.10 micrometer to about 0.65 micrometer (22, fig. 2, col. 2, line 55), a retainer ring engaged to the flask for retaining the first and second filter members in the opening (30, fig. 2),

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said first filter member has a higher flexibility than the second filter member (col. 2, lines 54-58).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11, 16-18, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Rits. Jones discloses a freeze drying apparatus; and a device disposed in said apparatus for holding substances during freeze drying (col. 7, line 41-50), said device comprising a flask having a structure defining a opening a first filter member disposed in said opening (93, fig. 13), disposing a substance in a flask; positioning the flask in a drying apparatus; and passing a drying medium through a first filter member... for drying the substance (col. 7, lines 35-50), rehydrating the dried substance (col. 7, line 54), exposing the flak to water vapor (col. 7, line 54). Jones discloses applicant's invention substantially as claimed with the exception of and a second filter member disposed in the opening juxtaposedly to the first filter member, and through a second filter member juxtaposed to the first filter member, the flask comprises a transparent structure, viewing the substance through the transparent structure, said first filter member has a higher flexibility than the second filter member. Rits teaches and a second filter member disposed in the opening juxtaposedly to the first filter member (fig. 2), and through a second filter member juxtaposed to the first filter member (fig. 2), said first filter member has a

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higher flexibility than the second filter member (col. 2, lines 54-58) for providing more effective filtration. It would have been obvious to one of ordinary skill in the art to modify Jones by including a second filter member disposed in the opening juxtaposedly to the first filter member, and through a second filter member juxtaposed to the first filter member, said first filter member has a higher flexibility than the second filter member as taught by Rits for the purpose of providing more effective filtration. Rits teaches the flask comprises a transparent structure, viewing the substance through the transparent structure (col. 4, lines 5-7) for the purpose of examining the substance to make observations. It would have been obvious to one of ordinary skill in the art to modify Jones by including the flask comprises a transparent structure, viewing the substance through the transparent structure as taught by Rits for the purpose of examining the substance to make observations.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Rits as applied to claim 10 above, and further in view of Sutherland et al. Jones in view of Rits discloses applicant's invention substantially as claimed with the exception of contacting the substance with a temperature conductive member for monitoring the temperature of the substance, coupling a thermocouple to the temperature conductive substance. Sutherland et al teaches contacting the substance with a temperature conductive member for monitoring the temperature of the substance, coupling a thermocouple to the temperature conductive substance (36, 42, fig. 2) for the purpose of accurately controlling the freeze drying process. It would have been obvious to one of ordinary skill in the art to modify Jones by including contacting the substance with a temperature conductive member for monitoring the temperature of the substance, coupling a thermocouple to the temperature conductive substance as taught by

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Sutherland for the purpose of accurately controlling the freeze drying process to prevent rendering a useless substance.

***Allowable Subject Matter***

Claims 57-59 are allowed.

Claims 6-8, 12, 15, 33-35, 45-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

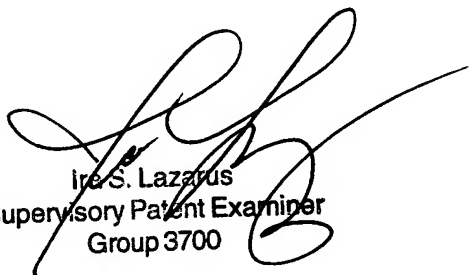
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth B Rinehart whose telephone number is 703-308-1722. The examiner can normally be reached on 7:30-4:30 M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-308-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

KBR  
June 3, 2003

  
Ira S. Lazarus  
Supervisory Patent Examiner  
Group 3700